IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3008 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M K MIN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3008 of 1988

MR YN OZA for Petitioner No. 1

MR BY MANKAD, AGP for Respondent No. 1

NOTICE NOT RECD BACK for Respondents No. 2-3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 11/01/2002

ORAL JUDGEMENT

1. Dr.M.K.Min, petitioner has filed this petition with a prayer to issue writ in the nature of mandamus or an appropriate writ, order or direction to respondents to

immediately release all post retirement benefits which have not been paid to the petitioner with 18% compound interest. He has also prayed for writ of mandamus be issued or directions in the nature of mandamus by quashing and setting aside the enquiry proceedings initiated against the petitioner in pursuance to the chargesheet dated 30th November, 1987, issued against him by Health and Medical Services, Ahmedabad, and respondents have no right to hold departmental inquiry in pursuance to the said chargesheet. This petition was filed somewhere in May 1988.

2. The facts giving rise to this petition are as under:-

2.1 The petitioner was working as a Medical Officer with the State Government. The petitioner was retired government servant and at the time of his retirement he was working as a Medical Officer Class-II. It may be noted that on 30.11.87 the Government has issued a chargesheet against the petitioner and in the said chargesheet it was alleged that due to inadvertence and negligence of the petitioner the Government had paid bills to M/s.Siemens India Co.Ltd for X-ray Machinery Repair in the month of March 1982 and in the month of July 1982 and for that Rs.43,133.10 was paid by the Government in this behalf.

2.2 It may be noted that, pursuant to the said chargesheet, departmental enquiry was also initiated against the petitioner. Thereafter the present petition has been filed praying for the relief which has been set out earlier in this behalf.

3. When the matter was placed for hearing before this Court, on 30.6.88 this Court (Coram: M.B.Shah, J. as he was then) pleased to pass the following order:

> "Mr.Oza, learned advocate appearing on behalf of the petitioner, submitted that the allegation against the petitioner even if it is taken as it is would not show that there was no gross-negligence on the part of the petitioner in discharging his duties because the company to which the bill was paid twice had written a letter to the department immediately that the company has received the payment twice. Whether there was a bonafide error on the part of the petitioner or on the part of his lower officers cannot be decided at this stage. Hence, prayer for ad-interim relief staying the departmental

inquiry is rejected."

4. The Government thereafter through P.M.Oza, Senior Administrative Officer, filed an affidavit dated 21.12.88 in which it has been stated that the petition has become infructuous because many grievances ventilated by the petitioner in the petition have been redressed by the respondent authorities. It has been stated that the inquiry proceedings started by the order dated 30th November, 1987, has been dropped by respondent No.2 under his order dated 21.9.88 and for making payment of retirement benefits to the petitioner has also been passed on 15.11.88. By virtue of the said order, the provisional pension of Rs.1965/- has been granted to the petitioner in this behalf. It was further stated that, a sum of Rs.66,000/- is to be paid to the petitioner as Death Cum Retirement Gratuity. It was stated that inquiry was initiated against the petitioner because of irregularities committed by him and, therefore, a sum of Rs.5,000/- is to be withheld by the Government and certain outstanding has been cleared by the petitioner in this behalf.

5. After the petition was filed, it was reported by Special Inspector General of Police, CID (Crime and Railways) under his letter dated 6.9.88 that, the petitioner had committed serious irregularities in the Post Mortem of dead body of late Bhala who is alleged to be murdered at village Kathwadi. In pursuance to the said report, the respondent No.2 had initiated inquiry and petitioner has bee given a show-cause-notice dated 17.12.88. Due to said inquiry, a sum of Rs.5000/- has been withheld from the amount of gratuity payable to the petitioner.

6. However, during the pendency of the petition, Mr.B.Y.Mankad, learned AGP has pointed out that, Dr.Min has retired from service on 31.12.87, and because of the earlier incident noted, provisional pension of Rs.1965.00 was to be paid and gratuity amount of Rs.66,000.00 and out of that amount Rs.5000/- has been withheld and Rs.5524.00 amount of interest of HBA was deducted. So in all Rs.55,476/- amount of gratuity was sanctioned. However, Dr.Min died on 24.12.91 and, therefore, departmental inquiry which was initiated was dropped and thereafter government passed the order on 5.10.2000, a further order on 19.12.2001 and a communication dated 10.1.2002 has been addressed by Health Services, Gandhinagar to learned AGP in which it has been stated that all the grievances of the petitioner has been

redressed. The copy of the letter dated 5th October, 2000, 19th December, 2001 and 10th January, 2002, have been taken on record.

7. In view of the same, the petition is dismissed accordingly with no order as to costs. Rule is discharged.

(K.M. Mehta, J.)

syed/